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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1940.

No. 726.

ANHEUSER-BUSCH, INCORPORATED, a Corporation, Petitioner,

v.

GUY T. HELVERING, Commissioner of Internal Revenue, Respondent.

MELROSE ICE CREAM CORPORATION, a Dissolved Corporation, and ADOLPHUS BUSCH III, CHARLES D. RUSSELL, GUS G. KINDERVATER and WILLIAM J. LANDES, Surviving Members of the Last Board of Directors and Trustees for the Creditors and Stockholders of Said Melrose Ice Cream Corporation, Petitioners,

v.

GUY T. HELVERING, Commissioner of Internal Revenue, Respondent.

} Consolidated Causes.

PETITIONERS' BRIEF IN REPLY TO BRIEF FOR THE RESPONDENT IN OPPOSITION.

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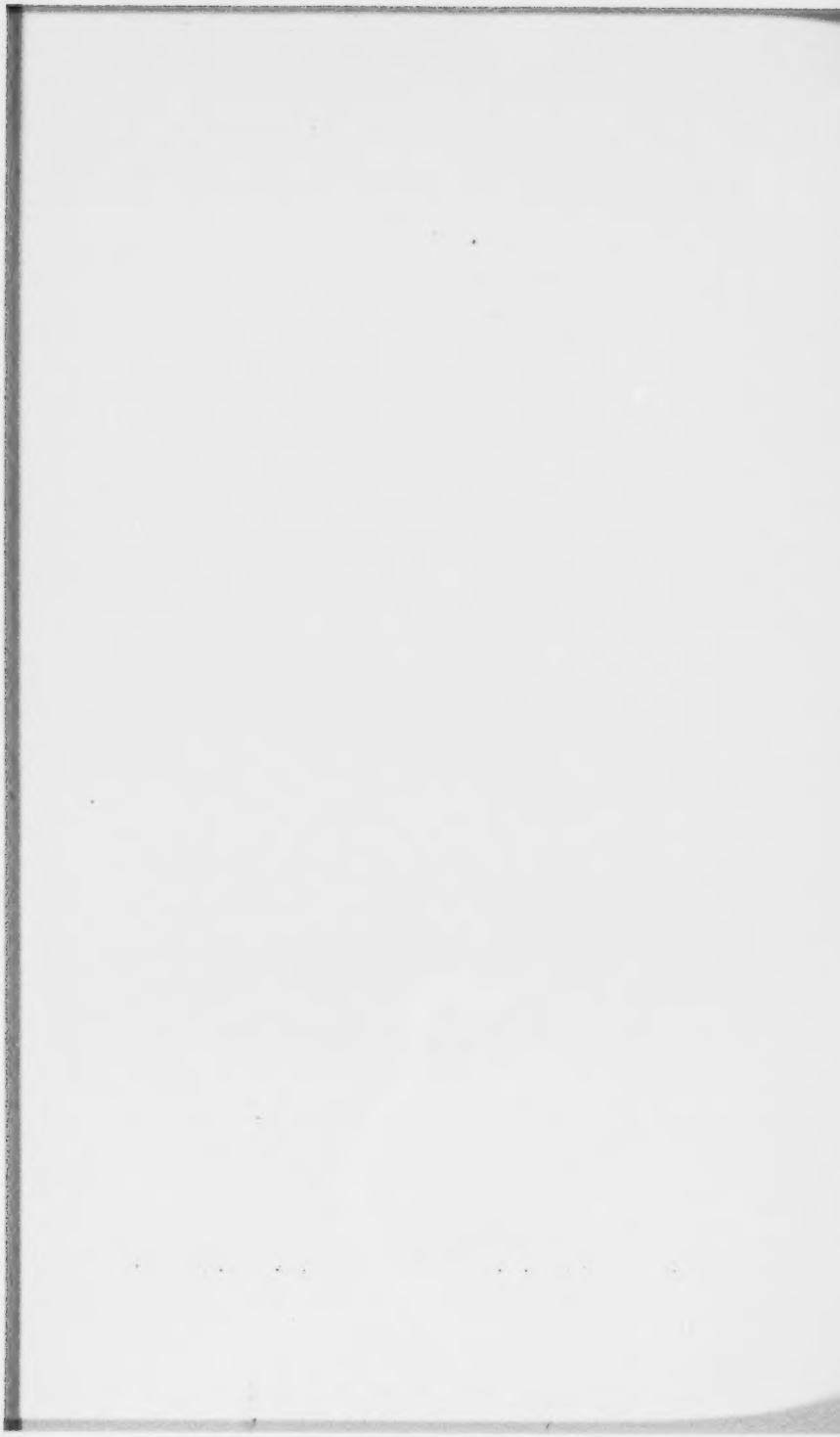

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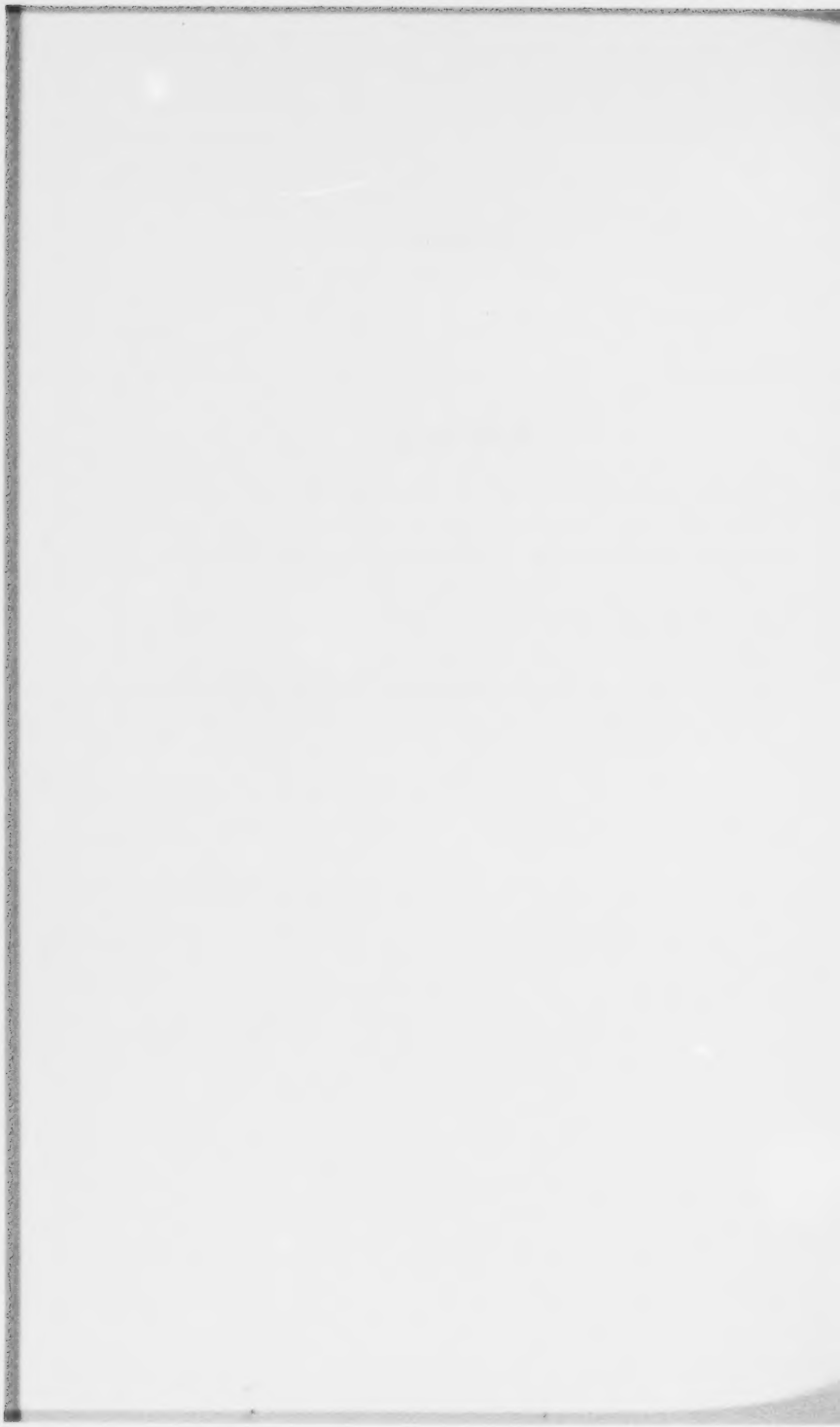

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It is our purpose herein to reply briefly to the points made by Respondent in the "Argument" section of his Brief in Opposition, taking those points in the order in which they appear.

I.

(a) Respondent's argument that the ownership by The Borden Company of the assets of the New York corporation "was transitory and without real substance" has been anticipated and met in Point 1 of the Supporting Brief (pp. 25-28).

(b) When Respondent asserts that Borden's conveyance to Delaware was "effected as part of the same transaction as the transfer of the assets to Borden," he is "begging the question." Anheuser-Busch, Incorporated, did not give an "option" to The Borden Company to transfer the assets to its subsidiary or "intend" that the subsidiary "should have them upon completion of the entire transaction," unless any transferor who confers unrestricted ownership of property upon a transferee may be said to have given the transferee the "option" to retain or to dispose of the property, and may be said to have "intended" whatever conveyance the transferee might make. Knowledge on the part of Anheuser-Busch, Incorporated, of *Borden's* intent, coupled with an agreement merely to change the name of the New York Corporation, is not tantamount to participation in a deal with the Delaware Corporation, nor a factor establishing that The Borden Company, the only party with which Anheuser-Busch, Incorporated, dealt, was not a party to the reorganization. Absent logical coalescence of the two transfers, the "continuity of interest" test is fully satisfied. Petitioners are bound to show only a "continuity of interest" throughout the transaction in which they participated.

II.

Respondent's argument relative to the case of *Portland Oil Company v. Commissioner*, 109 F. (2d) 479, amounts only to this: Although under Clause B of the statutory

definition of reorganization (p. 5 of Petition for Writ of Certiorari) the character of an exchange, as one free from recognition of gain, is not altered by what one of the parties may, by pre-arrangement with third parties, do with the property received, yet the rule should be to the contrary under Clause A of the very same definition. No reason for a difference in rule is advanced by the Respondent (Cf. Supporting Brief, pp. 28-31).

III.

Respondent suggests that the case of *Schuh Trading Company v. Commissioner*, 95 F. (2d) 404, was inferentially overruled by the Circuit Court of Appeals for the Seventh Circuit in *United Light and Power Company v. Commissioner*, 105 F. (2d) 866. Skeletonizing the holdings of the two cases, they may be stated as follows:

> *Schuh Trading Company Case:* Where it is agreed that the assets of X corporation shall be conveyed to Y corporation, or at Y's option to its subsidiary, in exchange for stock in Y, and at Y's direction the assets are conveyed to its subsidiary, Z corporation, Y *is* a party to the reorganization.
>
> *United Light and Power Company Case:* Where X corporation, pursuant to a plan of reorganization entered into with Y corporation, transfers assets (consisting of stocks in subsidiary corporations) to Z corporation in exchange for stock in Z, and thereupon X corporation transfers the stock in Z corporation to Y, in exchange for stock in Y, Y is *not* a party to the reorganization fully consummated between X and Z.

It is plain that in the *Schuh Trading Company* case, Y was a principal to the reorganization under consideration, and in the *United Light and Power Company* case it was merely "an efficient agent."

IV-V.

Respondent does not specifically treat points 4 and 5 raised in the Supporting Brief (pp. 32-33). Succinctly stated, they are: (4) Because of its unrestricted control over the assets received, The Borden Company was a principal in the deal, and under *Groman v. Commissioner of Internal Revenue,* 302 U. S. 82, is therefore to be considered as a party to the reorganization; (5) the effect of the decision below is to make the issue of tax or no tax dependent upon the uncontrolled act of another party, and such tax is unreasonable, capricious and confiscatory. We earnestly urge upon the Court to consider these, as well as the other, points raised by us, as valid reasons for the granting of a Writ of Certiorari.

Respectfully submitted,

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